EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL LOVALL SPIGNER,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.
No. 21,187

APPEAL from the United States District Court for the Southern District of California, Southern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Southern Division

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.....and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the ..... judgment of the said District Court in this Cause be, and hereby is.....

Filed and entered Dec. 8, 1966.

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL LOVALL SPIGNER,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 21,187

[December 8, 1966]

Appeal from the United States District Court for the Southern District of California Southern Division

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Before: BARNES, JERTBERG and BROWNING, Circuit Judges PER CURIAM:

This is an appeal from a verdict of guilty on each count of a three count indictment, charging the appellant with (a) smuggling 30 lbs. of marijuana into the United States; (b) concealing and transporting said 30 lbs. of marijuana within the United States; and (c) smuggling certain merchandise, viz. two revolvers and certain ammunition, into the United States. The court below had jurisdiction (21 U.S.C. § 176(a); 18 U.S.C. § 545), and so do we (28 U.S.C. § 1291).

This appeal raises two questions:

1. The sufficiency of the evidence

There is no merit to the contention that there was insufficient evidence to sustain the conviction. See *Glasser v. United States,* 315 U.S. 60, 80 (1942). Appellant urges that "certain statements" made by him after his arrest were inadmissible because contrary to the rule announced

in *Miranda v. Arizona,* 384 U.S. 436 (1966). Assuming that the statements made come within the *Miranda* rule, that rule was held not retroactive to persons whose trials had not begun as of June 13, 1966. (*Johnson v. New Jersey,* 384 U.S. 719, 730 (1966).) Appellant was tried on March 29, 1966. Hence the *Miranda* rule does not apply to him.

2. The examples

Appellant objects to certain examples given by the trial judge (when instructing the jury), in explanation of the difference between "actual" and "constructive" possession, and between "joint" and "sole" possession. Without stating why or in what manner the illustrations were erroneous, appellant urges they were "unfair" and "confused" and did "mislead" the jury. We do not agree. We think they were of aid to a proper consideration of the case.

We find appellant had a fair trial, and no error exists. We *affirm.*

EXHIBIT C

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1966

DANIEL LOVALL SPIGNER,

Petitioner,

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 6, 1967.

S/ W. O. DOUGLAS

Associate Justice of the Supreme Court of the United States

Dated this 29th day of December, 1966.

EXHIBIT D

Title 21 U.S.C. Section 176(a)

Notwithstanding any other provision of law, whoever, knowingly, with intent to defraud the United States, imports or brings into the United States marihuana contrary to law, or smuggles or clandestinely introduces into the United States marihuana which should have been invoiced, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such marihuana after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or whoever conspires to do any of the foregoing acts, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned for not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this subsection, the defendant is shown to have or to have had the marihuana in his possession, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury.

As used in this section, the term "marihuana" has the meaning given to such term by section 4761 of the Internal Revenue Code of 1954.

For provision relating to sentencing, probation, etc., see section 7237(d) of the Internal Revenue Code of 1954. Feb. 9, 1909, c. 100, § 2(h), as added July 18, 1956, c. 629, Title I, § 106, 70 Stat. 570.

Title 18 U.S.C. Section 545

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States, in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term "United States", as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam. June 25, 1948, c. 645, 62 Stat. 716; Aug. 24, 1954, c. 890, § 1, 68 Stat. 782; Sept. 1, 1954 c. 1213, Title V, § 507, 68 Stat. 1141; June 30, 1955, c. 258, § 2(c), 69 Stat. 242.

AMENDMENT V UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

EXHIBIT E

Comments by the Court in Instructing the Jury

The law recognizes two kinds of possession. The first category is actual and constructive possession. I best can give you illustrations of what I mean by actual and constructive possession.

Mrs. Pusey in the first seat in the jury box wore her wristwatch today. She is in actual possession of that wristwatch. Had she not put that wristwatch in the glove compartment of her car when she came into the courtroom, she would now be in constructive possession of that watch because she knows where the watch is and she would have the power to reduce it to actual possession at any time, and the law therefore says that she is in constructive possession of that wristwatch.

We define it legally as follows: A Person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. A Person who, though not in actual possession, knowingly has the power and the intention at a given time to exercise dominion or control over a thing either directly or through another person or persons is then in constructive possession of it.

Now, the law also recognizes that possession may be sole, or joint, and again, I will give you an example of that.

If Mrs. Pusey drove the family car down to the Court house today, while she was in the car, she was in actual possession of it, and she was in sole possession of it, but had she told her husband, "Now I'm going to leave the car on the parking lot and you have got keys to the car; if you want it, go down and get it," then the two of them would be in joint possession of that automobile because either one would have the power to go down and get it. This would be a constructive possession, not an

actual possession, bcause they are away from the car. Therefore, possession can be joint or sole.

Now, this instruction is given in connection with this merchandise found in the vehicle, if you find it was so found, to determine who had possession of it, either actual or constructive, or whether it was sole or joint possession. (R.T. 130-132.)